674-37

File No. 674/1937

Collection No.

Mysore Residency
Bangalore

CR 1247/67 Mas 14/7.

P-19

(K)

Pros. Serial Nos.

Subject.

Income tax Review petition No. 2 of
Mr. Samboomull Gangaram

Previous References.

Later References.

K

S. 97.—(Blue).

MFP—393 S&P—(M-625)—28-7-36—100,000.

NOTES AND PRECIS.

P.U.C. D.No. 3860 S.N. 1

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1 Usual draft to the Asst. Commissioner of Income-tax -- submitted.

Id/- J.S.S
22-4-37

Id/- P.M.R.
23-4-37

S.N. (2) Issue

C.p. 10 (PUC) D.No. 4928 S.N. 3

2 The appeal to the Asst. Commissioner, his orders and the note put up by the Income-tax Officer in this -- connection are in collection 'W'

3 The Review petition to the Commissioner is at S.N. 1 of 'Z'. It is in time -vide para 104 of the instructions in the Income-tax Manual.

* page 250 of the Income-tax Manual

4 The relevant Sections and Rules are Sections 33 & 10(2)(vi), and Rule 8.

× Page 80 'X'

(From para 2)

8/37

Sec.

1/. Please do not in future call for the records without putting the case up to me. This is not an appeal : it is a review

2/. I do not consider that the Commissioner should interfere in review unless it comes to his notice that there is something patently wrong with the order & appeal order, which it is important to correct. In this case, the Asst. Commissioner has not given a perfectly reasonable interpretation of the Section & Rule, & I see no cause for interfering with this order.

H Ramchandran.
10/6/37.

S.N. 4 Issue

Await 10/12-37

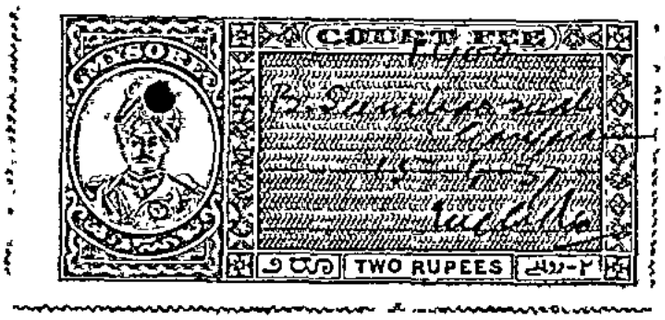
Record

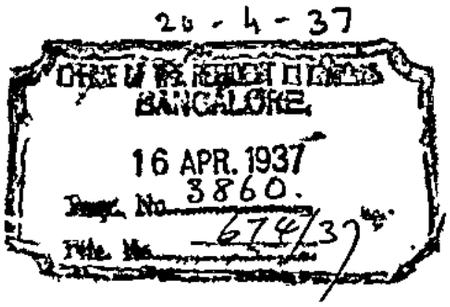
31/12

CORRESPONDENCE.

In S' S.N-1
1614

11





TO THE COMMISSIONER OF INCOME-TAX, C.&.M.STATION,
BANGALORE.

THE FOURTEENTH DAY OF APRIL 1937.

THE HUMBLE REVIEW PETITION OF SAMBOOMULL GANGARAM SHOWETH AS FOLLOWS:-

(1) Your petitioner submitted the return of income in time and was assessed by the Learned Income-tax Officer, C.&.M.Station, Bangalore on an income of Rs.7197/-. (Fr 2869) In assessing the petitioner, the learned income-tax Officer did not allow depreciation claimed on 2 cars proportionate to the use of the cars for business. The petitioner filed an appeal before the Learned Assistant Commissioner of Income-tax C.&.M.Station, Bangalore stating that the proportionate depreciation should be allowed to the proportion of~~x~~ the use of cars for business. In support of the petitioner's claim, the petitioner's auditor filed a circular letter of ~~Revenue~~ Member of Central Board, ~~Mrx~~ Sir Alexander Tottenham, Member of the Central Board of Revenue advocating the proportionate allowance of depreciation of Motor Cars according to the ~~pr~~ proportion of the use of the car for business. The Learned Assistant Commissioner did not accept the letter as having the force of a regular order for general adoption by the department and further stated that the practice ~~will be~~ which was considered reasonable in certain ~~cases~~ quarters in 1932, but has since been considered not possible to discontinue. As a result the Learned Assistant Commissioner of Income-tax has dismissed the appeal.

C.P.8

C.P.6

(2) Your petitioner has to trouble you with this review application under Sec.33 of the Income tax Act as a legal point of some importance has arisen, the decision of which will affect a good number of assessees.

(3) The allowance of depreciation is claimed under Sec.10(2) (vi) of the Income-tax Act. Under this section expenses are allowed proportionate to the use of a particular thing for the business and it has been really stated in section 10 (2) (i) that in case of rent, rent should be allowed -- proportionate to the use of the building of business. So it follows that it was intended by the legislators of the Act that ~~ex-proxent~~ depreciation also should be allowed according to the proportion of the ~~assessee~~ asset used for business. On page 80 of the Income-tax M nual, in the rules what is ~~is~~ given is, the rate of depreciation, ~~there~~ that should be allowed. These the only thing stated is "Motor Cars used solely for the purpose of business 15%". So the correct interpretation of the rule will be that in case of cars that are solely used for business depreciation should be allowed at the full rate of 15% but in case whether the car or cars are utilised for business proportionate depreciation should be allowed. Your petitioner kindly refers you to the letter of Mr. Tottenham and it will be seen that his interpretation is the same which the petitioner has advocated in the appeal petition.

C.f. E

(4) Your petioner most humbly submits that throughout British India in Bombay, Madras, Calcutta, Delhi and other big cities of India, the practice followed by the department is to allow proportionate depre-

ciation for the car used partly for business. The practice is still in force and in order to support the above statement, petitoner begs to file herewith a copy of the appellate order passed on 22nd. December 1936 by the Assistant Commissioner of Income-tax Madras allowing depreciation from one half to three-fourths of 15% as the car was mostly utilised for ¾ of the day for business and for ¼ of the day for personal use. The Learned Assistant Commissioner of Madras has further allowed Rs.47 on account of depreciation as will be seen in the 3rd. line from the end of Page 2 of his order. (Copy is enclosed herewith) This is one of the instances of innumerable cases in Madras and in other big cities of allowing depreciation on cars on proportionate basis.

C.P.1

(5) The Learned Assistant Commissioner states that there has been no ruling or that there are no instructions from Central Board of Revenue. The petitioner begs to point out that as the depreciation is invariably allowed proportionately by the Income-tax Officers throughout British India it has not been found necessary to take the point for High Court's decision. Further, Central Board of Revenue is not expected to issue instructions for small points for which no dispute of law has reached them. Mr. Tottenham in his interview with the Southern Indian Chamber of Commerce Madras was put several querries regarding the administration of Income-tax law and rules, and among these querries the querry regarding the depreciation on motor car partly used for business was included and as such he replied in the manner stated in his circular letter.

C.P.8

(6) Your petitioner further invites your kind reference to the suggestion made by the Income-tax Enquiry Committee in the report of the committee, wherein the committee points out that general depreciation on Motor Cars is allowed proportionately by the Income-tax Officers but some officers object to allow proportionate depreciation at 15% but allows them at 5% general depreciation rate and as such the committee recommends that proportionate depreciation be allowed to 15% rate. (at page 39 Copy of which is enclosed herewith) C.f 5

(7) Your petitioner therefore requests the Learned Commissioner of Income-tax C.&.M.Station, to allow proportionate depreciation claimed by the petitioner in the depreciation form duly filled and submitted by him before Income-tax Officer, C.&.M.Station.

(8) Your petitioner further requests that the Learned Commissioner be pleased to sanction refund of the extra amount paid on a passing the order allowing the proportionate depreciation as claimed by the petitioner.

(9) The petitioner humbly submits that had it not been for the importance of the matter regarding the legal point of view involved in this case your petitioner would not have troubled the LearnedCommissioner of Income-tax with this Review Application for a small sum of amount of refund of tax.

(Sd) Sanbhoomale Sanjaram

I, Mangilal, the Agent of the petitioner do hereby declare that what is stated in the above Review Application is true to the best of my information and belief.

(Sd) Mangilal

L. S. KOTADIA, G.D.A., R.A.,
Public Accountant & Auditor,
Permanent Unrestricted Auditor's
Certificate Holder from the Government of India,
Approved Auditor for Mysore State Incometax,

OFFICES AT:
1. 49, BRIGADE ROAD, SHOOLEY (C. & M. S.)
2. CHICKPET, BANGALORE CITY.
3. 7, LUCKMUDASS STREET,
PARK TOWN.

15

Madras, ... 193

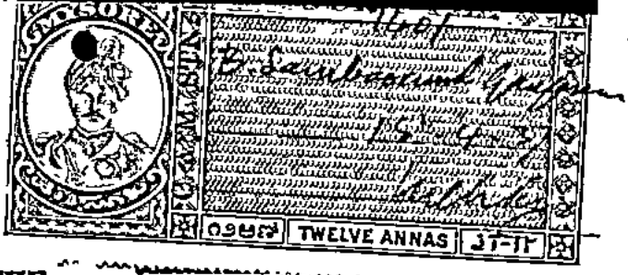
(Extract from Incometax Enquiry Report 1936)

Page 39

(D) Assets only partly used for business

A further point represented to us is the unfair treatment of buildings, plant and machinery (Motor cars are specially in question) used only partially for the purposes of trade or profession. Under Rule 8 as it stands at present, the rate of 15 per cent is prescribed for motor cars used solely for the purpose of the business. Motor cars partially so used are often treated as falling within the general class of machinery, plant, & furniture, the rate for which is 5 per cent., irrespective of the extent to which the car is used for business purpose. It is recommended that the rules should provide that the allowance for buildings plant & machinery used partially for business purposes should be such proportion of the allowance, calculated at the prescribed rate, as corresponds to the proportion in which its use is for business purposes.

F.2869



IN THE OFFICE OF THE ASSISTANT COMMISSIONER
OF INCOME-TAX, C & M STATION,
BANGALORE.

Date of order 11th March 1937

INCOME-TAX APPEAL No. 17/1936-37

Instituted on the 14th December 1936.

from the order of the ~~Assistant Commissioner~~ Income-tax Officer of C & M Station, Bangalore.

(1) Year of assessment. 1936-37

(2) Name of Appellant. Mr. Samboomal Gangaram.

(3) Income assessed. Rs.9,270/-

(4) Tax demanded ~~Income-tax~~ & surcharge Rs.365-8-0

(5) Section under which assessment was made. 23(3)

Date of hearing— 29th January 1937.

Present for Appellant— Mr.L.S.Kotadia, G.D.A., R.A.,

APPELLATE ORDER AND GROUND OF DECISION.

The appellant claims depreciation on two motor cars (or one motor car - the appeal memo is not quite clear) on the ground that they are used for business purposes. This claim has been disallowed by the Income-tax Officer both in respect of this year and the previous year. At the time of assessme the appellant claimed proportionate allowance for depreciatio on two motor cars on the ground that they were used partly fo business purpose. His claim has therfore to be examined on this basis.

I.T. 82.
MFP—314 IT—(M-437)—26-6-35—100,000.

2. The rule is clear. In respect of a car used solel

fo

For business purposes an allowance for depreciation may be claimed and admitted at the rate of 15%. The appellant however claims that in respect of a car (or cars) used partly for business a proportionate ~~xkxxxx~~ allowance should be admitted. He relies upon a circular letter dated 1932 to the South Indian Chamber of Commerce by a former member of the Central Board of Revenue on the subject, in which the practice is in a somewhat guarded manner described as "reasonable". But I am unable to accept this letter as having the force of a rule or order for general adoption by the Department. There are no instructions from the Central Board of Revenue to this effect, nor any High Court ruling such as would bind me, and presumably a practice which was considered reasonable in certain quarters in 1932 has since been considered not possible or discountenanced. In the absence therefore of express instructions or rulings, I am obliged to disallow the claim.

3. The further contention which appears to be a clerical error by the Department will be dealt with by the Income-tax Officer under Sec.35. With this exception I uphold the assessment.

ASST. COMMR. OF INCOME-TAX.

13-3-37.

DESPATCHED
16 MAR. 1937

To

The Appellant.

IN THE OFFICE OF THE ASSISTANT COMMISSIONER

OF INCOME-TAX EASTERN RANGE, MADRAS.

Date of order 22nd December 1936

Income-tax Appeal No.410/36--37.

Instituted on the 25th. November 1936.

from the order of the Income-tax Officer of Madras ~~xxx~~ IV Circle.

(1) Year of assessment. 1936--37.

(2) Name of Appellant. Messrs. Chimanlal Kothari & Co. 439, Mint St., Madras.

(3) Income assessed. Rs.20,888/-

(4) Tax demand Income-tax. Rs.3064---4---0

(5) Section under which assessment was made 23(3)

Date of hearing -- 21st. December 1936.

Present for Appeallant -- Mr. Chimanlal Kothari.

APPELLATE ORDER AND GROUND OF DECISION.

The only point raised in this appeal by Messrs. Chimnlal Kothari & Co. a registered firm doing business in diamonds and precious stones, is in respect of the allowance made by the Income-tax Officers for the maintenance of a motor car. The total expenses incurred by the firm under ~~which~~ this head during the year was Rs.2515---11---6. The auditor, Mr. Kotadia who ~~xxxx~~ prepared the profit and loss statement, disallowed one fourth of this amount as not relating to the business and claimed that the balance should be

P.T.O.

treated as relating to the business. But the Income-tax Officer increased the disallowance to one-half of the total amount in accordance with the past practice in this case.

2. In appeal it is contended that the car is practically used for the business only and that the nature of the business is such that there is frequent necessity to go about in the car to canvass business. Out of 7 partners two alone are living in Madras. In the circumstances of the case I am prepared to accept the contention of the petitioners and allow three-fourths of the motor car expenses as relating to business. In this view I will allow a further deduction of Rs.629/- on account of motor car expenses and Rs.47/- on account of depreciation.

3. The total and taxable income will then stand at Rs.20,212/-. The tax will be adjusted accordingly.

Sd.....

Assistant Commissioner.

To the petitioner with I.T.15

,, Income-tax officer, Madras IV Circle with records.

(com)

18

Extract from the reply to the Chamber's Memorandum
By Sir Alexander Tottenham 15th. Sept 1932.

Vehicles used partly for business purposes.

Rule 8, item 2, no doubt provides a rate of depreciation only for motor cars used wholly for the purposes of the business. This condition does not appear against any other relevant item, nor in Sec. 10 (2) (iv) and (vi) under which depreciation is permissable if the vehicles is the property of the assessee and is used (simply) for the purposes of the business. The rule cannot narrow the application of the Section and I, therefore, consider it reasonable to continue and what I believe has been the usual practice of allowing a proportion of the usual rate of depreciation where a motor car (for example) is used only partly for business purposes, and the same principle applied to running expenses, but, of course, the proportion allowed will necessarily be arbitrary and it must be left to the discretion of the Income-tax Office to fix it in each case with reference to the circumstances and the facts so far as he can ascertain them.

THE SOUTHERN INDIA CHAMBER OF COMMERCE

No. G.1476. Indian Chamber Buildings,
Madras, 4th. December 1934.

Mr. L.S.Kotadia, G.D.A., R.A.,
Public Accountant & Auditor
8. Lucktudass Street,
P.T. Madras.

Sir,

Depreciation on Motor Cars - Your Letter of 1st. December '34.

I am to enclose an extract from the reply of Sir Alexander Tottenham to the Chamber's memorandum dated 15th. September 1932 regarding vehicles used partly for business purposes.

Yours faithfully,

Sd.....

Enc; 1. Hon. Secretary.

S.N.2

9

Issued 29/4/37.

DEPARTMENT.

BRANCH.

File No.

Serial No.

Draft Letter / Memorandum / Telegram

Class for telegrams — Ordinary / Express / Urgent* / Priority / Clear Line† — *Only for Foreign Telegrams. †Not for Foreign Telegrams.

No F.674/37/R.O.I. Dated 23 April 1937

To be issued on — Issued on

1st Reminder

2nd Reminder

3rd Reminder

Heading:

Case or Diary No.

If post copy of telegram required

Date of despatch of above

List of enclosures

(~~Code word for telegrams~~)

To

The Assistant Commr. of Income-tax,
C.& M. Station, Bangalore.

Income-tax Review petition No. 2 & 3-
petitioner Mr. Samboomull Gangaram
(Appeal petition No.17/1936-37)

The connected papers may kindly be forwarded to this office.

For Secy. to the Resident & Commr.
of Income-tax.

22-4-37

23.4.37

S.5.

MGIPC—S1—1989(CPS) MFP—(M-1738)—19-2-35—50,000 Pds.

S. N. 3

No. F. 2869

OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME-TAX, C. & M. STATION,

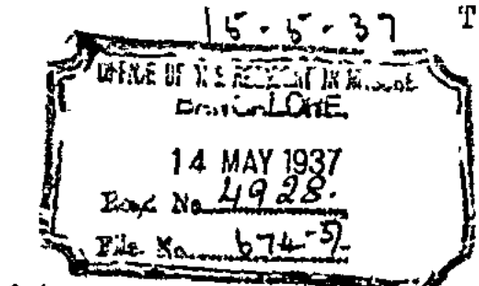
Bangalore, the 5th Lay, *1937*

FROM

L. J. MacIver, Esquire, I.C.S.,

ASSISTANT COMMISSIONER OF INCOME-TAX,
CIVIL AND MILITARY STATION,
BANGALORE.

To



The Secretary to the Hon'ble the Resident in Mysore
and Commissioner of Income-tax,
C. &. M. Station, Bangalore.

Submitted under Rule

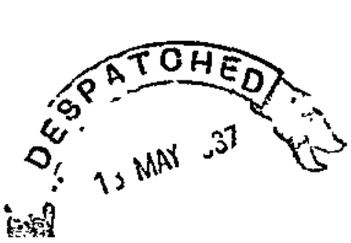
SIR,

Subject:— Income-tax Review petition No.3/36-37
Petitioner Mr. Samboomal Gangaram - Your
memorandum No.F.674-37/R.O.I dt.29-4-1937.

S.N.2 c.f. 9 (2)

I have the honour to forward herewith the assessment and appeal records of the above-named assessee for the year 1936-37, with the connected papers.

I have the honour to be,
Sir,
Your most obedient servant,



ASST. COMMR. OF INCOME-TAX.

S.N.4

Issued 6/14/6/37.

IN THE OFFICE OF THE COMMISSIONER OF INCOME-TAX,
Civil and Military Station, Bangalore.

---:0:---

No. P.674-37 / R.C. I Dated Bangalore, the 14th June 1937

Income-tax Review petition No.2 of 1937-38.

Petitioner:-

Mr. Samboomal Gangaram,
B a n g a l o r e.

O R D E R.

I do not see sufficient cause to interfere in review with the orders already passed.

O/C. A

COMMISSIONER OF INCOME-TAX.

To

Mr. Samboomal Gangaram,
49 Brigade Road, Bangalore.

The Assistant Commissioner of Income-tax,
Civil and Military Station, Bangalore, with records returned.

BJ